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7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 JASON SHELTON,  
Plaintiff,  
12  
v.  
13

Case No. 5:18-cv-02167 SP

**~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER**

14 COUNTY OF SAN BERNARDINO;  
SERGEANT GARY WHEELER;  
15 DEPUTY DOE 1; DEPUTY DOE 2;  
and DOES 1 through 100, inclusive  
16 Defendants.  
17

Honorable Magistrate Judge Sheri Pym

## **PROTECTIVE ORDER**

### **1. A. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

### **B. GOOD CAUSE STATEMENT**

This action is likely to involve the production of peace officer personnel materials, including but not limited to citizen complaints and internal affairs investigation materials, for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial,

1 to address their handling at the end of the litigation, and serve the ends of justice, a  
2 protective order for such information is justified in this matter. It is the intent of the  
3 parties that information will not be designated as confidential for tactical reasons and  
4 that nothing be so designated without a good faith belief that it has been maintained in a  
5 confidential, non-public manner, and there is good cause why it should not be part of the  
6 public record of this case.

## 7 8 2. DEFINITIONS

9 2.1 Action: This pending federal lawsuit, *Shelton v. County of San Bernardino*, 5:18-cv-  
10 02167 SP.

11 2.2 Challenging Party: a Party or Non-Party that challenges the designation of  
12 information or items under this Order.

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
14 generated, stored or maintained) or tangible things that qualify for protection under  
15 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause  
16 Statement.

17 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support  
18 staff).

19 2.5 Designating Party: a Party or Non-Party that designates information or items that it  
20 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

21 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium  
22 or manner in which it is generated, stored, or maintained (including, among other things,  
23 testimony, transcripts, and tangible things), that are produced or generated in disclosures  
24 or responses to discovery in this matter.

25 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to  
26 the litigation who has been retained by a Party or its counsel to serve as an expert  
27 witness or as a consultant in this Action.

28 2.8 House Counsel: attorneys who are employees of a party to this Action. House

Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff.

2.11 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL." The Parties agree that designation should be limited to matters regarding deputies' personnel files, internal affairs investigations, and information pertaining to the privacy rights of third parties.

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge.

1 This Order does not govern the use of Protected Material at trial.

#### 2 4. DURATION

3 Even after final disposition of this litigation, the confidentiality obligations imposed by  
4 this Order shall remain in effect until a Designating Party agrees otherwise in writing or  
5 a court order otherwise directs. Final disposition shall be deemed to be the later of (1)  
6 dismissal of all claims and defenses in this Action, with or without prejudice; and (2)  
7 final judgment herein after the completion and exhaustion of all appeals, rehearings,  
8 remands, trials, or reviews of this Action, including the time limits for filing any motions  
9 or applications for extension of time pursuant to applicable law.

#### 10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
12 Non-Party that designates information or items for protection under this Order must take  
13 care to limit any such designation to specific material that qualifies under the appropriate  
14 standards. The Designating Party must designate for protection only those parts of  
15 material, documents, items, or oral or written communications that qualify so that other  
16 portions of the material, documents, items, or communications for which protection is  
17 not warranted are not swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
19 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
20 unnecessarily encumber the case development process or to impose unnecessary  
21 expenses and burdens on other parties) may expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it designated  
23 for protection do not qualify for protection, that Designating Party must promptly notify  
24 all other Parties that it is withdrawing the inapplicable designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
26 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
27 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
28 must be clearly so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents, but  
3 excluding transcripts of depositions or other pretrial or trial proceedings), that the  
4 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter  
5 “CONFIDENTIAL legend”), to each page that contains protected material. If only a  
6 portion or portions of the material on a page qualifies for protection, the Producing Party  
7 also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
8 in the margins).

9 A Party or Non-Party that makes original documents available for inspection need not  
10 designate them for protection until after the inspecting Party has indicated which  
11 documents it would like copied and produced. During the inspection and before the  
12 designation, all of the material made available for inspection shall be deemed  
13 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants  
14 copied and produced, the Producing Party must determine which documents, or portions  
15 thereof, qualify for protection under this Order. Then, before producing the specified  
16 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page  
17 that contains Protected Material. If only a portion or portions of the material on a page  
18 qualifies for protection, the Producing Party also must clearly identify the protected  
19 portion(s) (e.g., by making appropriate markings in the margins).

20 (b) for testimony given in depositions that the Designating Party identify the  
21 Disclosure or Discovery Material on the record, before the close of the deposition all  
22 protected testimony.

23 (c) for information produced in some form other than documentary and  
24 for any other tangible items, that the Producing Party affix in a prominent place on the  
25 exterior of the container or containers in which the information is stored the legend  
26 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,  
27 the Producing Party, to the extent practicable, shall identify the protected portion(s).

28 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to

1 designate qualified information or items does not, standing alone, waive the Designating  
2 Party's right to secure protection under this Order for such material. Upon timely  
3 correction of a designation, the Receiving Party must make reasonable efforts to assure  
4 that the material is treated in accordance with the provisions of this Order.  
5

## 6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
8 confidentiality at any time that is consistent with the Court's Scheduling Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
10 process under Local Rule 37.1 et seq.

11 6.3 The burden of persuasion in any such challenge proceeding shall be on the  
12 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,  
13 to harass or impose unnecessary expenses and burdens on other parties) may expose the  
14 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn  
15 the confidentiality designation, all parties shall continue to afford the material in  
16 question the level of protection to which it is entitled under the Producing Party's  
17 designation until the Court rules on the challenge.  
18

## 19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
21 produced by another Party or by a Non-Party in connection with this Action only for  
22 prosecuting, defending, or attempting to settle this Action. Such Protected Material may  
23 be disclosed only to the categories of persons and under the conditions described in this  
24 Order. When the Action has been terminated, a Receiving Party must comply with the  
25 provisions of section 13 below (FINAL DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a location and  
27 in a secure manner that ensures that access is limited to the persons authorized under this  
28 Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
2 by the court or permitted in writing by the Designating Party, a Receiving Party may  
3 disclose any information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as  
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
6 disclose the information for this Action;

7 (b) the officers, directors, and employees (including House Counsel) of  
8 the Receiving Party to whom disclosure is reasonably necessary for this Action;

9 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
10 reasonably necessary for this Action and who have signed the “Acknowledgment and  
11 Agreement to Be Bound” (Exhibit A);

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

14 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to  
15 whom disclosure is reasonably necessary for this Action and who have signed the  
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (g) the author or recipient of a document containing the information or a custodian or  
18 other person who otherwise possessed or knew the information;

19 (h) during their depositions, witnesses ,and attorneys for witnesses, in the Action to  
20 whom disclosure is reasonably necessary provided: (1) the deposing party requests that  
21 the witness sign the form attached hereto; and (2) they will not be permitted to keep any  
22 confidential information unless they sign the “Acknowledgment and Agreement to Be  
23 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
24 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
25 Protected Material may be separately bound by the court reporter and may not be  
26 disclosed to anyone except as permitted under this Stipulated Protective Order; and

27 (i) any mediator or settlement officer, and their supporting personnel,  
28 mutually agreed upon by any of the parties engaged in settlement discussions.



1  
2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
3 OTHER LITIGATION

4 If a Party is served with a subpoena or a court order issued in other litigation that  
5 compels disclosure of any information or items designated in this Action as  
6 “CONFIDENTIAL,” that Party must:

7 (a) notify in writing the Designating Party within three calendar days of receipt of the  
8 subpoena or court order. Such notification shall include a copy of the subpoena or court  
9 order;

10 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
11 the other litigation that some or all of the material covered by the subpoena or order is  
12 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
13 Protective Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
15 Designating Party whose Protected Material may be affected.

16 If the Designating Party timely seeks a protective order, the Party served with the  
17 subpoena or court order shall not produce any information designated in this action as  
18 “CONFIDENTIAL” before a determination by the court from which the subpoena or  
19 order issued, unless the Party has obtained the Designating Party’s permission. The  
20 Designating Party shall bear the burden and expense of seeking protection in that court  
21 of its confidential material and nothing in these provisions should be construed as  
22 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive  
23 from another court.

24 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO  
25 BE PRODUCED IN THIS LITIGATION

26 (a) The terms of this Order are applicable to information produced by a Non-Party in  
27 this Action and designated as “CONFIDENTIAL.” Such information produced by Non-  
28 Parties in connection with this litigation is protected by the remedies and relief provided

1 by this Order. Nothing in these provisions should be construed as prohibiting a Non-  
2 Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce a  
4 Non-Party's confidential information in its possession, and the Party is subject to an  
5 agreement with the Non-Party not to produce the Non-Party's confidential information,  
6 then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all  
8 of the information requested is subject to a confidentiality agreement with a Non-Party;

9 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in  
10 this Action, the relevant discovery request(s), and a reasonably specific description of  
11 the information requested; and

12 (3) make the information requested available for inspection by the Non-Party, if  
13 requested.

14 (c) If the Non-Party fails to seek a protective order from this court within 14 days of  
15 receiving the notice and accompanying information, the Receiving Party may produce  
16 the Non-Party's confidential information responsive to the discovery request. If the Non-  
17 Party timely seeks a protective order, the Receiving Party shall not produce any  
18 information in its possession or control that is subject to the confidentiality agreement  
19 with the Non-Party before a determination by the court. Absent a court order to the  
20 contrary, the Non-Party shall bear the burden and expense of seeking protection in this  
21 court of its Protected Material.

## 23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
25 Material to any person or in any circumstance not authorized under this Stipulated  
26 Protective Order, the Receiving Party must immediately (a) notify in writing the  
27 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
28 unauthorized copies of the Protected Material, (c) inform the person or persons to whom

1 unauthorized disclosures were made of all the terms of this Order, and (d) request such  
2 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is  
3 attached hereto as Exhibit A.  
4

## 5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 6 PROTECTED MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
8 produced material is subject to a claim of privilege or other protection, the obligations of  
9 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
10 This provision is not intended to modify whatever procedure may be established in an e-  
11 discovery order that provides for production without prior privilege review. Pursuant to  
12 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the  
13 effect of disclosure of a communication or information covered by the attorney-client  
14 privilege or work product protection, the parties may incorporate their agreement in the  
15 stipulated protective order submitted to the court.

## 16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
18 seek its modification by the Court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
20 Order no Party waives any right it otherwise would have to object to disclosing or  
21 producing any information or item on any ground not addressed in this Stipulated  
22 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
23 evidence of any of the material covered by this Protective Order.

24 12.3 Filing Protected Material. A Party that seeks to file any Protected Material must  
25 comply with Civil Local Rule 79-5. Protected Material may only be filed under seal  
26 pursuant to a court order authorizing the sealing of the specific Protected Material at  
27 issue. If a Party's request to file Protected Material under seal is denied by the court, then  
28 the Receiving Party may file the information in the public record unless otherwise

1 instructed by the court.

2  
3 13. FINAL DISPOSITION

4 After the final disposition of this Action, as defined in paragraph 4, within 60 days of a  
5 written request by the Designating Party, each Receiving Party must return all Protected  
6 Material to the Producing Party or destroy such material. As used in this subdivision, “all  
7 Protected Material” includes all copies, abstracts, compilations, summaries, and any  
8 other format reproducing or capturing any of the Protected Material. Whether the  
9 Protected Material is returned or destroyed, the Receiving Party must submit a written  
10 certification to the Producing Party (and, if not the same person or entity, to the  
11 Designating Party) by the 60 day deadline that (1) identifies (by category, where  
12 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that  
13 the Receiving Party has not retained any copies, abstracts, compilations, summaries or  
14 any other format reproducing or capturing any of the Protected Material.

15 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
16 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
17 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
18 consultant and expert work product, even if such materials contain Protected Material.  
19 Any such archival copies that contain or constitute Protected Material remain subject to  
20 this Protective Order as set forth in Section 4 (DURATION).

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2 14. Any violation of this Order may be punished by any and all appropriate measures  
3 including, without limitation, contempt proceedings and/or monetary sanctions.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
5

6 DATED: June 20, 2019

MORRIS LAW FIRM

7 By: /s/Danielle R. Pena

8 Christopher S. Morris

9 Danielle R. Pena

10 Attorneys for Plaintiff

11 DATED: June 25, 2019

MICHELLE D. BLAKEMORE

12 County Counsel

13 By: /s/Shannon L. Gustafson

14 Shannon L. Gustafson

15 Deputy County Counsel

16 Attorneys for Defendants  
17

18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.  
19

20 DATED: June 25, 2019

21 

22 \_\_\_\_\_  
23 Sheri Pym

24 United States Magistrate Judge  
25  
26  
27  
28

**EXHIBIT A**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
have read in its entirety and understand the Stipulated Protective Order that was issued  
by the United States District Court for the Central District of California on [date] in the  
case of \_\_\_\_\_ [insert formal name of the case and the number and initials  
assigned to it by the court]. I agree to comply with and to be bound by all the terms of  
this Stipulated Protective Order and I understand and acknowledge that failure to so  
comply could expose me to sanctions and punishment in the nature of contempt. I  
solemnly promise that I will not disclose in any manner any information or item that is  
subject to this Stipulated Protective Order to any person or entity except in strict  
compliance with the provisions of this Order. I further agree to submit to the jurisdiction  
of the United States District Court for the Central District of California for the purpose  
of enforcing the terms of this Stipulated Protective Order, even if such enforcement  
proceedings occur after termination of this action. I hereby appoint  
\_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with this  
action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_